

Remarks

The foregoing amendments and following remarks are responsive to the March 8, 2007 Requirement for Restriction.

Status of the Claims

Claims 61-62 are added. Claims 41, 43-48, 53-54 and 56-62 are pending. Claims 42, 49-52 and 55 were cancelled previously.

Requirement for Restriction

The Examiner restricted the claims to the following Groups: (I) Claims 41, 43-48, 53-54, 56 and 59, relating to a process for producing a cosmetic/pharmaceutical active component; (II) Claims 57 and 58, relating to a cosmetic and/or pharmaceutical preparation; and (III) Claim 60, relating to a method of using the product. Applicants traverse the requirement for reasons which follow.

The claims of Groups (I) – (III) are related as a process for producing an active component, a preparation including the active component, and a method of treating a substrate with the active component produced according to the process. The Examiner has failed to provide an example of how the process of using can be as practiced with another materially different product, or that the product as claimed can be used in a materially different process as required by M.P.E.P § 806.05(h). Therefore, the Requirement for Restriction is improper.

In addition, the Requirement is improper because the Examiner is making a three-way requirement, which can only be made where the process of making is distinct from the product. The Examiner has not established the distinctiveness of the process from the product as discussed above.

In addition, the Examiner cited U.S. Patent No. 5,618,723 (Klaenhammer) as allegedly teaching the technical feature of rice fermentation prepared by microorganisms (Lactobacillus, Lactococcus, Leuconostoc, and yeast) inoculation. The Examiner alleged that (based on the disclosure of Klaenhammer) there is no special technical feature in the application, and concludes the groups are not so linked

to form a single general concept under PCT Rule 13.1, and therefore lack of unity of invention exists.

Contrary to the Examiner's allegation, Applicants' invention relates, in one aspect, to inoculating the fermentation broth with a mixture of microorganisms comprising at least one *Lactobacillus*, at least one *Lactococcus*, at least one *Leuconostoc* and at least one yeast. Although Klaenhammer discloses the individual components as claimed, Klaenhammer does not disclose the particular combination as claimed. Therefore, the reason for the citation of Klaenhammer to support the allegation that there is no special technical feature in the application and the conclusion that the groups are not so linked to form a single general concept is unclear. Clarification is respectfully requested.

In addition, the Examiner requested an election of species (plant component), a particular pretreatment, and a particular separation method. With regard to a particular species, the claims were previously restricted to rice. It is unduly narrow in scope for the Examiner to further request an election of plant components (plant constituent or plant extracts). With regard to the particular pretreatment, the specification discloses (page 8, lines 8-10) that pasteurization or sterilization may be carried out over a period of 1 to 30 minutes at temperatures of 60 to 135°C. With regard to the particular separation method, the specification discloses (page 9, lines 10-14), for example, centrifuging, membrane filtration, liquid/liquid or solid phase extraction, chromatography, and precipitation from solvents. Applicants traverse the requirement to select among the plant components of rice and the various pretreatments and separation methods as being unduly narrow in scope, where the Examiner would not be unduly burdened in conducting a search for the particular mixture of microorganisms comprising at least one *Lactobacillus*, at least one *Lactococcus*, at least one *Leuconostoc* and at least one yeast.

In view of the foregoing, reconsideration and withdrawal of the Requirement for Restriction are respectfully requested.

Election of Claims

In accordance with 37 C.F.R. § 1.499, Applicants elect Claims 41, 43-48, 53-54,

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and 56 of Group I for examination on the merits (Claim 59, which depends from Claim 57, should be listed in Group II). New Claims 61-62, which depend from elected Claims 41 and 56, respectively, should also be examined with the elected claims. In addition, Applicants elect rice plant extracts as a plant component, pasteurization as a pretreatment, and filtration as a separation method.

Information Disclosure Statement (IDS)

The Examiner is respectfully requested to initial, date, and return a copy of PTO-Form 1449 provided with the January 17, 2007 Request for Continued Examination to the undersigned.

Fees


No fees are believed due. The Commissioner is authorized to charge any fees deemed due (or credit any balance owing) to Deposit Account No. 50-1177.

Conclusion

It is respectfully submitted that Claims 41, 43-48, 53-54 and 56-62 are in condition for allowance. A Notice of Allowance is respectfully requested. If anything further is needed to advance the allowance of this application, the Examiner is urged to contact Applicants' attorney at the telephone number indicated below.

Respectfully submitted,

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Date


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